Supreme Court, U.S.
FILED

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No.

IN THE

Supreme Court of the United States

RABBI ROBERT A. GOODMAN

Petitioner

v.

TEMPLE SHIR AMI, INC.,
a Florida non-profit
corporation, and
RICHARD ASHENOFF,

Respondents

On Petition For Writ Of Certiorari
to the Supreme Court of the State of Florida

PETITION FOR WRIT OF CERTIORARI

RAYMOND L. ROBIN, ESQ.
Counsel for Petitioner
RAYMOND L. ROBIN, P.A.
1121 SOUTH 21ST AVENUE
HOLLYWOOD, FLORIDA 33020
(954) 920-3003

36pp

QUESTIONS FOR REVIEW

Whether the Establishment or the Free Exercise Clauses of the First Amendment to the United States Constitution preclude Florida Courts from considering the case of a Rabbi against a synagogue and a lay board member for claims for breach of contract, termination in violation of the synagogue's by-laws and defamation where the synagogue is congregational and has no tribunal for resolving its own disputes and the Rabbi has no other means of redress.

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CITATIONS OF OPINIONS AND ORDERS IN THIS CASE

1) *Goodman v. Temple Shir Ami, Inc.*, 737 So.2d 1077 (Fla. 1999)

2) *Goodman v. Temple Shir Ami, Inc.*, 712 So.2d 775 (Fla. 3d DCA 1998)

3) Order Granting Defendants' Renewed Motion to Dismiss the Complaint dated April 24, 1997.

STATEMENT OF BASIS FOR JURISDICTION

This Petition is brought from an opinion of the Supreme Court of Florida dated July 8, 1999. In its opinion, the supreme court withdrew its prior grant of jurisdiction to consider the matter and dismissed the Petitioner's appeal. The opinion of the Supreme Court of Florida constitutes a decision by the highest court of Florida.

This Court's jurisdiction to consider this matter is derived from 28 U.S.C. § 1257 and Supreme Court Rule 10.

CONSTITUTIONAL AND STATUTORY AUTHORITIES

1. First Amendment to the United States Constitution, U.S. Const. amend. I

2. Fifth Amendment to the United State Constitution, U.S. Const. amend. V.

3. Fourteenth Amendment to the United States Constitution, U.S. Const. amend. XIV

STATEMENT OF THE CASE AND FACTS

Petitioner Robert Goodman is a Rabbi.[1] Respondent Temple Shir Ami is a reform synagogue which is congregational in structure — it is an entirely autonomous and independent congregation, without affiliation to any national religious organization.[2] It is simply governed by its own by-laws. Temple Shir Ami has no tribunal, court or other judicial body for resolving its disputes. Respondent Ashenoff is a professional, private investigator. At all times material to this case, Ashenoff was on the board of directors of Temple Shir Ami (the "Board of Directors") and on its executive committee (the "Executive Committee").

In April 1991, Rabbi Goodman entered into a written employment contract (the "First Contract") with Temple Shir Ami to serve as its Rabbi for an initial term of two years ending on June 30, 1993. The First Contract provided that Rabbi Goodman could only be terminated for cause and included an automatic extension provision of one additional year beginning on July 1, 1993, unless notice of termination was given by either party. The First Contract made no provision for venue or choice of law and did not indicate how disputes between the parties were to be resolved. It did however include a covenant not to compete which prohibited Rabbi Goodman from becoming employed by another Temple within twenty-five miles of Temple Shir Ami after his employment with Temple Shir Ami ended.

In December 1993, approximately six months before the First Contract was to expire, the Board of Directors

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[1] All references to the Appendix will be designated as [A:].

[2] Courts have drawn a distinction between religious entities that are congregational versus hierarchical. Whereas hierarchical organizations have institutions established for resolving disputes within the organization, congregational organizations do not.

authorized Mirson, then President of Temple Shir Ami, to negotiate a new contract with Rabbi Goodman with the term commencing on July 1, 1994. After several meetings, Mirson and Rabbi Goodman agreed on the material terms of the new contract which would extend for three years after the First Contract expired, with an option for two additional years (the "Second Contract"). Mirson prepared a memorandum outlining the material terms of the Second Contract (the "Memorandum").

The Memorandum was presented to the Board of Directors at a board meeting held on February 9, 1994. The Board of Directors approved and agreed to the terms of the Second Contract as set forth in the Memorandum. The minutes of the meeting expressly and clearly state that the Board of Directors approved the Second Contract. The minutes were duly signed by the secretary of Temple Shir Ami. Although Rabbi Goodman did not attend the Board of Directors meeting, soon thereafter, members of the Board of Directors, including Ashenoff and Mirson, advised him that the Board had approved the Second Contract and Temple Shir Ami had entered into a new contract with him for three years with a two year extension.

A few weeks after the February 9th board meeting, certain members of the Executive Committee including Ashenoff and Mirson, discussed the possibility of repudiating the Second Contract. These discussions culminated in a telephone conference meeting of the Executive Committee held on Thursday, March 24, 1994. During the meeting, the Executive Committee decided to reopen the issue of the Second Contract and to attempt to cancel the Temple's approval of it. Although the by-laws of Temple Shir Ami clearly provide that any individual whose continued employment is being considered by the Executive Committee "shall have an opportunity to make a presentation on [his/her] own behalf," *By-Laws*, Article VII(E)(5), Rabbi Goodman was not advised that the

meeting was going to take place, was not invited to attend the meeting, and was not able to address or respond to any of the allegations which were made against him at that meeting.[3]

On the evening of Monday, March 28, 1994, Mirson called Rabbi Goodman into a meeting in his office at which Richard Ashenoff was present. Mirson presented Rabbi Goodman with two letters. One was a letter of resignation; the other a letter of termination. Mirson advised Rabbi Goodman that unless he signed the letter of resignation, the Executive Committee would recommend his termination. Rabbi Goodman was shocked. He asked Mirson why the Executive Committee had decided to recommend his termination, to which Mirson replied: "We don't like your style." Rabbi Goodman has never been given any other explanation for Temple Shir Ami's action. Rabbi Goodman refused to sign the letter of resignation.

Immediately after the meeting, members of the Executive Committee began calling members of the Board of Directors to advise them that an emergency meeting to discuss Rabbi Goodman would be held the very next evening. Temple Shir Ami's by-laws require that Board Members be given notice of a special meeting "*at least three (3) days*, or as soon as practical, *prior* to the Special Meeting." (Emphasis Added.) *By-Laws* Article (V)(k). No notice was given to members of the general congregation. The board members were not advised that the meeting was to consider repudiating the Second Contract. Other than the board members who received notice few, if any, congregants attended the emergency meeting the next day.

At the emergency meeting, Ashenoff, the private investigator, told the Board that he had undertaken an

[3] Temple Shir Ami has refused to produce a tape recording of the meeting which it admits exists.

investigation of Rabbi Goodman and had learned that Rabbi Goodman had viciously attacked another Rabbi at the temple where he had been employed prior to coming to work for Temple Shir Ami. The Executive Committee advised the Board that based on this new information, it recommended that Temple Shir Ami cancel the Second Contract set to begin on July 1, 1994. The Board then conducted a secret ballot and voted to oust Rabbi Goodman. Rabbi Goodman has properly alleged that (1) the statements made by Ashenoff were completely false and made with malice in an attempt to sway the Board of Directors to unfairly and unlawfully repudiate the Second Contract; and (2) Ashenoff was aware that his statements were false at the time he made them. The issue leading to the Board of Director's decision to terminate Rabbi Goodman was Ashenoff's fabrication concerning Rabbi Goodman's attack on his superior at his prior employment.

Rabbi Goodman was told he would be permitted to address the Board of Directors at the emergency meeting, but was not permitted to attend the entire meeting. Instead, Rabbi Goodman was told to wait outside and was only called into the meeting for a few minutes after the Board of Directors had already voted to oust him. Although he was allowed to make a short statement to the Board of Directors, he was never advised as to the accusations that had been made against him.

The next day, Mirson delivered a letter (the "President's Letter") to the members of the congregation of Temple Shir Ami stating, in relevant part:

> While meeting to discuss details of the Rabbi's contract, circumstances regarding the Rabbi's *continued inappropriate conduct* surfaced. Although no one action constituted reason for censure, the multitude of issues, along with the *pattern of previous concerns*, forced the Executive Committee to re-evaluate its position . . . . [T]he

> time has come for Rabbi Goodman and Temple Shir Ami to part company. (Emphasis added). [ExD:1]

The Board of Directors authorized and instructed its members and other representatives to call the congregants individually and advise them of the decision to repudiate the Second Contract. The First Amended Complaint alleges that during those conversations, in order to justify their decision, numerous false statements were made to the congregants that Rabbi Goodman had not only committed a crime amounting to aggravated battery upon another human being but had also violated the confidences of congregants.

Rabbi Goodman continued to work for Temple Shir Ami until the First Contract expired on June 30, 1994. Although he was ready, willing and able to perform the Second Contract, Temple Shir Ami breached the Second Contract by repudiating it. In addition, Temple Shir Ami failed to pay Rabbi Goodman his final paycheck and refused to reimburse him for work-related expenses.

Rabbi Goodman filed this action in September 1994. Rabbi Goodman sued Ashenoff for damages for defamation and tortious interference with an advantageous business relationship and/or tortious interference with the Second Contract. Rabbi Goodman sued Temple Shir Ami for breach of the First Contract[4] and the Second Contract, wrongful termination, and defamation. The "wrongful termination" claim against Temple Shir Ami is based on the fact that Temple Shir Ami's "termination" of Rabbi Goodman was in direct violation of its own by-laws. In pertinent part, the by-laws provide:

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[4] Because it withheld Rabbi Goodman's paychecks and other payments due under the First Contract, Rabbi Goodman sued Temple Shir Ami for breach of the First Contract for withheld salary payments for work performed.

(a) The Executive Committee shall have responsibility for all personnel decisions *subject to ratification* by the *entire* Board. . . . The Committee shall [h]ave the authority to *initiate* action to evaluate, terminate or change the job status or conditions of employment of all employees. *By-Laws*, Article VII(E) and Article VII(E)(2). (Emphasis added).

(b) *The individual* being considered [during the Executive Committee Meeting] *shall have an opportunity to make a presentation on* [his/her] own behalf. *By-Laws*, Article VII(E)(5). (Emphasis added).

(c) All personnel recommendations of the Executive Committee shall be referred to the Board for action. . . . Special Meetings of the Board may be called by the President. . . . The notice of the meeting shall include the item(s) to be discussed. . . . The President shall cause notice to be issued to *all* Board members, *at least three (3) days*, or as soon as practical, *prior* to the Special Meeting. *By-Laws*, Article VII(E)(4) and Article V(K). (Emphasis added).

In all of his claims against Temple Shir Ami, Rabbi Goodman seeks only damages.

In response to the Complaint, both Temple Shir Ami and Ashenoff filed motions to dismiss based on the First Amendment, U.S. Const. amend I. and the Fourteenth Amendment, U.S. Const. amend XIV. [A:II] The trial court denied the Motions to Dismiss and the Respondents filed a Petition for Writ of Prohibition in the Third District Court of Appeal seeking to prohibit the trial court from even considering the Petitioner's action. The district court ordered Respondent to file a response to the Writ and after hearing oral argument, denied the Petition and sent the

matter back to the trial court for a "more complete development of the underlying facts. . . ."

> Because appropriate principles of appellate review suggest that the issues involved in this case are better decided upon a more complete development of the underlying facts and after an initial determination by the trial court, *see Mendes v. Dowelanco Indus., LTDA.*, 651 So.2d 776 (Fla. 3d DCA 1995), the petition for writ of prohibition herein is dismissed wholly without prejudice to consideration and determination below and subsequent review in this court.

On remand at Temple Shir Ami's request, the trial court severely limited Petitioner's right to discovery. The trial court conducted a hearing on the issue of jurisdiction. Throughout this case and once again at the hearing on jurisdiction, the Respondents have refused to state why they repudiated Rabbi Goodman's Second Contract. Instead, they have simply stated that he was "terminated" for "inappropriate rabbinical behavior".

At the conclusion of the hearing, the trial court concluded that the issues raised in the action against the Temple were ecclesiastic in nature and outside the jurisdiction of the court. The court went on to state that "[t]he Ashenoff situation presents a closer question," but granted the motion to dismiss for lack of subject matter jurisdiction against Ashenoff as well. [A:I(c)].

On May 16, 1997, Rabbi Goodman filed his appeal to the Third District Court of Appeal of Florida. The Court issued its opinion on June 3, 1998, upholding the trial court's ruling. [A:I(b)] *Goodman v. Temple Shir Ami, Inc.*, 712 So.2d 775 (Fla. 3d DCA 1998). After the district court denied his motion for rehearing, Rabbi Goodman filed his Petition to Invoke Discretionary Jurisdiction in the Florida Supreme Court which was granted. After oral

argument before the Supreme Court of Florida, the court issued an opinion withdrawing its grant of jurisdiction and dismissing the Appeal. [A:I(a)].

ARGUMENT

There are four distinct reasons why this Court should grant a writ of certiorari in this case.

1. The issues raised in this case are of great public importance and affect a large number of individuals and entities similarly situated;

2. There is a conflict between the circuit courts in their decisions in this area of the law;

3. The federal issues raised in this case have never before been settled by this Court; and

4. The Petitioner has been denied all rights of redress granted by the Constitution.

1. The issues raised in this case are of great public importance and affect a large number of similarly situated individuals and entities.

In 1976, this Court decided *Serbian Eastern Orthodox Diocese for the United States of America & Canada v. Milivojevich*, 426 U.S. 694 (1976). In *Serbian*, this Court stated:

> In short, the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide

> disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them.

Id. at 724-25.

Most federal and state courts interpreted *Serbian* to require absolute abstention in any case which in any way involved a religious organization and its clergy. Examples of the knee-jerk decisions spawned by *Serbian* abound. *See, e.g., Natal v. Christian & Missionary Alliance*, 878 F.2d 1575 (1st Cir. 1989); *Lewis v. Seventh Day Adventist Lake Region Conference*, 978 F.2d 940 (6th Cir. 1992); *Young v. Northern Illinois Conference of United Methodist Church*, 21 F.3d 184 (7th Cir. 1994); *Yaggie v. Indiana-Kentucky Synod Evangelical Lutheran Church in America*, 860 F.Supp. 1194 (W.D. Ky 1994), *aff'd*, 64 F.3d 664 (6th Cir. 1995). When it came to disputes between religious organizations and their clergy, Chief Justice Rehnquist's prediction that *Serbian* would convert the courts "into handmaidens of arbitrary lawlessness" has been shown to be accurate. *Id.* at 727 (Rehnquist, J., dissenting). Courts have routinely rubber-stamped the oppressive actions of religious organizations regardless of how egregious their actions, how obvious their failure to follow their own rules for governance, or the patent merit of the claim of the clergy seeking relief.

Circuit and state courts have routinely relinquished their Constitutional responsibility and deferred to religious organizations' arbitrary and unjust decisions by dismissing cases without even allowing the most basic discovery or factual development. In so doing the courts have effectively disenfranchised clergy. It is now true that no religious leader can expect the most basic legal protection from the courts against wrongs committed against him or her by the church or church officials. In fact, it is fair to say that most courts in the United States

will dismiss any case brought by a member of a religious organization as soon as that organization indicates in its first defensive pleading that it is a religious organization.

Notwithstanding the unique facts of *Serbian* and the expressed application of the rule set forth in the opinion, the *Serbian* opinion has been applied by both federal and state courts with broad brush strokes to include cases markedly different from *Serbian*. The instant case is just such an example. Review by this Court is necessary to limit the effect of *Serbian*.

There are at least two important factors that distinguish this case and those like it, from those that *Serbian* was expressly intended to cover. First, the claims in this case are based upon a written employment contract voluntarily entered into by both Rabbi Goodman and Temple Shir Ami. Second, Temple Shir Ami is a congregational religious organization which has not established a tribunal to decide its disputes.

In many respects what sets this case apart from those relied upon by the lower courts is the fact that Temple Shir Ami voluntarily entered into a written employment contract with Rabbi Goodman when it hired him. The First Contract is essentially no different from any employment agreement between an employer and employee. It includes provisions which could only be enforced by civil courts. The First Contract included for example a "non-compete provision" prohibiting Rabbi Goodman from accepting employment with any other Temple within twenty-five miles of Temple Shir Ami for one year after leaving Temple Shir Ami. Temple Shir Ami has no tribunal or affiliation with any body that could enforce the non-compete provision and the First Contract does not specify a means by which such a provision could be enforced. Having insisted on the provision, it is obvious that Temple Shir Ami itself agreed that disputes over the employment agreement would be litigated in the courts.

Following *Watson v. Jones*, 13 Wall. 679 (1872), courts have based their strict abstention approach in part on the idea that by joining a voluntary religious organization, members implicitly agree to be bound by the decisions of the hierarchy and to relinquish rights to have civil courts second guess those decisions. When the relationship is created by a written employment agreement which contains rights that are only enforceable by civil courts, however, the opposite implication is appropriate; namely, the parties thereby implicitly agree to submit disputes arising from the employment contract to civil courts. Entering into a written contract is itself a secular act which subjects the religious organization to secular review. *Cf.* David J. Overstreet, Note, *Does the Bible Preempt Contract Law?: A critical examination of Judicial Reluctance to Adjudicate a Cleric's Breach of Employment Contract Claim Against a Religious Organization*, 81 MINN. L. REV. 263, 285-86 (1996). This is especially true where the organization has no tribunal to make those decisions.

The second factor which sets this case apart is that Temple Shir Ami is congregational in structure. It has no tribunal to consider Rabbi Goodman's claims. No tribunal, religious or secular, has ever considered the merits of Rabbi Goodman's claims. All of the cases relied upon by the courts in this case to date have enforced an abstention doctrine based in large part on the idea that secular court is not the proper forum to decide the matter and that the religious organization's tribunal is the only proper arbiter of the dispute. This logic falls short in cases such as the instant one where there is no tribunal to decide the case and the claimant is simply left with no remedy at all. This Court was careful in *Serbian* to make the reach of the abstention doctrine only to churches that are hierarchical and that choose to establish tribunals to resolve their own disputes. The broad application by lower courts of the

Serbian opinion has left a portion of the population without any remedy at all for the wrongs committed against them.

The lower courts' decisions are a direct result of a misinterpretation of this Courts' decisions and primarily *Serbian*, which the lower courts have interpreted to mean that regardless of structure of the religious organization, courts cannot consider any claim involving it and its clergy. Such an interpretation leads to arbitrary, unjust and oppressive results and has the courts turning their backs on a large segment of otherwise deserving citizens.

Like all congregational religious organizations, Temple Shir Ami established neutral by-laws for its governance. But did not establish any tribunal to interpret and enforce those by-laws in the event of a dispute. Unlike cases involving hierarchical religious organization, the Petitioner's case is not only based on the claim that the Temple failed to follow its own by-laws, but more importantly, it failed to provide any means by which the dispute could be resolved. In other words, this is not a case where the Petitioner is attempting to retry the decision of a religious tribunal by having the court second-guess its decision; instead the Petitioner asks only to have a review of his claims at all.

2. There is a conflict between the decisions of the federal circuit courts on issues raised in this case.

While many courts subscribe to the strict abstention approach of dismissing any case involving a religious leader and a religious organization, a number of federal courts have moved away from that "per se" approach. *See, e.g., Farias v. International Church of the Foursquare Gospel*, No. 95-4784 (11th Cir. Apr. 24, 1996); *Drevlow v. Lutheran Church Missouri Synod*, 991 F.2d 468 (8th Cir. 1993); *Minker v. Baltimore Annual Conference of United*

Methodist Church, 894 F.2d 1354 (D.C. Cir. 1990). The Eleventh Circuit Court of Appeals rejected the strict abstention approach in *Farias*, a case involving issues which are similar to those present in this case.

Farias involved a dispute between a minister and a church directly relating to the minister's employment with the church. The United States District Court for the Southern District of Florida dismissed all of *Farias*' claims against the church on ground that the First Amendment prohibited the court from adjudicating any claim between a church and its minister relating to his employment. On appeal, the Eleventh Circuit Court of Appeals, adopting the reasoning of the Eighth Circuit Court of Appeals in *Drevlow*, reversed the district court and held that because (i) the case would not involve inquiry into "the religious beliefs, laws and regulations" of the church, and (ii) the church had not offered "any religious explanation for its action that might entangle the court in an ecclesiastical concern in violation of the First Amendment," the minister was entitled to pursue his action against the church. *Farias*, at 3.

Similarly, in *Drevlow*, and *Minker* the circuit courts permitted cases to proceed although they involved churches and their ministers. *Drevlow*, 991 F.2d at 471 ("First Amendment does not shield employment decisions made by religious organizations from civil court review, . . . where the employment decisions do not implicate religious beliefs, procedures, or law."); *Minker*, 894 F.2d at 1359 ("[a] church is always free to burden its activities voluntarily through contracts, and such contracts are fully enforceable in civil courts".) Based on the cases outlined in section 1, *supra*, there is clearly a conflict between the circuit courts on this issue and guidance from this Court is necessary to resolve the conflict.

3. The issues raised in this case have never been addressed by this Court.

Although this Court has decided a number of cases involving religious organizations' relationships with their clergy, this Court has not decided any case such as the instant case where enforcing the strict abstention doctrine would result in the complete denial of other basic rights guaranteed by the Constitution. The most obvious is the right to due process and to equal protection. Because this case raises new issues not previously decided by this Court and which affect a large number of its citizens, this case is worthy of this Court's attention.

4. The Petitioner has been denied all rights of redress guaranteed by the Constitution.

Under the Fifth Amendment to the United States Constitution all citizens are guaranteed access to court. The United States Constitution further guarantees its citizens equal protection. U.S. Const. amend. XIV, § 1. The lower courts' rulings in this case effectively deny the Petitioner access to the courts and the right to redress for wrongs committed against him. Because Temple Shir Ami has chosen to have no tribunal to resolve its disputes, if the lower courts' rulings are permitted to stand, a citizen against whom wrongs have been committed will have no remedy.

Rabbi Goodman is not requesting that the court interfere in anyway with Temple Shir Ami's choice of its religious leader. Rabbi Goodman is not requesting that the court reinstate him as the religious leader of Temple Shir Ami. Rabbi Goodman asks only that he be compensated with damages for the injury he has suffered as a result of the actions of Temple Shir Ami and its lay board member, Respondent Richard Ashenoff. Accordingly, granting relief in this case will not create an excessive entanglement between the State and Temple Shir Ami or chill the free

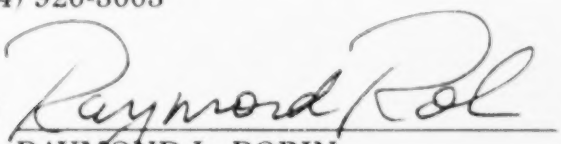
exercise of the Respondents' First Amendment rights. Instead, it will simply require religious organizations and those who control them to be responsible for their torts and discourage them from making "empty, misleading promises to [their] clergy." *Minker*, 894 F.2d at 1360. Anything less will relegate civil courts in cases involving religious organizations with no means for dispute resolution "into handmaidens of arbitrary lawlessness." *Serbian*, *Id.* at 727 (Rehnquist, J., dissenting). Under the Fifth Amendment to the United States Constitution, Rabbi Goodman is entitled to redress for his injuries. In this case, redress can only be accomplished in the civil courts.

CONCLUSION

In light of the foregoing, Petitioner Rabbi Robert A. Goodman respectfully requests that the Court grant him a Writ of Certiorari and consider his appeal.

Respectfully submitted,

RAYMOND L. ROBIN, P.A.
1121 South 21st Avenue
Hollywood, Florida 33020
(954) 920-3003

By: 
RAYMOND L. ROBIN
Fla. Bar No. 613835

Appendix

APPENDIX

1. Opinions and Orders entered in conjunction with the Order sought to be reviewed.

   (a) Opinion of the Supreme Court of Florida dated July 8, 1999. *Goodman v. Temple Shir Ami, Inc.*, 737 S.2d 1077 (Fla. 1999)

   (b) Opinion of the Third District Curt of Appeal of Florida dated June 3, 1998. *Goodman v. Temple Shir Ami*, 712 S.2d 775 (Fla. 3d DCA 1998)

   (c) Order of Dismissal and Order on Renewed Motion to Dismiss for Lack of Subject-Matter Jurisdiction dated April 24, 1997

2. Defendant's Motion to Dismiss and to Strike dated October 17, 1994.

Supreme Court of Florida

No. 93,832

RABBI ROBERT A. GOODMAN,

Petitioner,

vs.

TEMPLE SHIR AMI, INC.,
a Florida non-profit corporation,
and
RICHARD ASHENOFF,

Respondents.

[July 8, 1999]

PER CURIAM.

We originally accepted jurisdiction to review *Goodman v. Temple Shir Ami, Inc.*, 712 So.2d 775 (Fla. 3d DCA 1998), based upon conflict jurisdiction. After further consideration, we have determined that jurisdiction was improvidently granted. We also decline to address the remaining points raised on appeal as they are beyond the scope of the alleged conflict and do not form an independent basis of jurisdiction before this Court. Accordingly, this review proceeding is hereby dismissed.

It is so ordered.

HARDING, C.J., and SHAW, WELLS, ANSTEAD, PARIENTE, LEWIS and QUINCE, JJ., concur.

NO MOTION FOR REHEARING WILL BE ALLOWED.

Application for Review of the Decision of the District Court of Appeal—Constitutional Construction

Third District—Case NO. 97-1477

(Dade County)

Raymond L. Robin, Hollywood, Florida,

for Petitioner

Peter A. Miller of Conroy, Simberg & Ganon, P.A., Miami, Florida, Melvin S. Black, Miami, Florida, Robert S. Glazier, Miami, Florida, and Clark D. Mervis, Miami, Florida,

for Respondents

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA THIRD DISTRICT

JANUARY TERM, A.D. 1998

CASE NO. 97-1477

LOWER TRIBUNAL
CASE NO. 95-16006

RABBI ROBERT A. GOODMAN,

Appellant,

vs.

TEMPLE SHIP AMI, INC., et al.,

Appellees.

Opinion filed June 3, 1998.

An appeal from the Circuit Court of Dade County, Margarita Esquiroz, Judge.

Macaulay, Zorrilla & Robin and Raymond L. Robin, for appellant.

Peter A. Miller; Melvin S. Black; Robert S. Glazier; Clark D. Mervis, for appellees.

Before COPE, FLETCHER, and Sorondo, JJ.

FLETCHER, Judge.

Rabbi Robert A. Goodman appeals the trial court's dismissal for lack of jurisdiction of his complaint for

defamation and for breach of his employment contract against his former employer, Temple Ship Ami, Inc. [the Temple], and for defamation and tortious interference against Richard Ashenoff, a member of the Temple's board of directors. We affirm in part and reverse in part as to the Temple, and affirm as to Ashenoff.

The Temple's initial contract with rabbi Goodman for his services as its spiritual leader originally was for two years, from July 1, 1991, through June 30, 1993, and was extended for a third year, through June 30, 1994. Prior to the expiration of that third year, the Temple and Rabbi Goodman entered into negotiations for a second contract. The parties are in dispute as to whether the second contract became binding on the Temple, but a resolution of that question is unnecessary to our conclusion. For the sake of convenience only we will make reference to the "second contract" as if it had been entered into in February, 1994 and extended the Rabbi's employment as the Temple's spiritual leader for three years.

In February and March, 1994, some members of the Temple's "executive committee" determined to oppose Rabbi Goodman's continued service. The matter was taken to the Temple's board of directors on March 29, 1994. At the board meeting, numerous concerns about the Rabbi were discussed, including various ones related to disagreement over religious concepts. Also at the meeting, board member Ashenoff stated that he had undertaken an investigation of Rabbi Goodman. The investigation—according to Ashenoff – revealed that the Rabbi had committed a crime by striking the senior Rabbi at a temple in Chicago where Rabbi Goodman was then employed, following which Rabbi Goodman's employment was terminated by the Chicago temple, which, in turn, prompted Rabbi Goodman to unjustifiably file and prosecute an action against that temple. Rabbi Goodman's recounting of the altercation and its aftermath (in his deposition) is diametrically opposed to Ashenoff's version.

It is this report by Ashenoff (and other comments) that is the basis of Rabbi Goodman's defamation claim and his action for tortious interference with an advantageous business relationship against Ashenoff.

The Temple's board of directors voted against "renewing" the first contract. (From Rabbi Goodman's perspective, the board actually determined not to honor his second contract.) The members of the Temple were advised of the board's action — which advice included repetition of Ashenoff's statements. After these events Rabbi Goodman served until his first contract expired on June 30, 1994, and not thereafter. By agreement, Rabbi Goodman attended a conference in Chicago, as provided by the first contract.

Rabbi Goodman subsequently filed suit, alleging four basic claims: (1) against the Temple for breach of the second contract by terminating his employment as the Temple's spiritual leader; (2) against the Temple and Ashenoff for defamation; (3) against Ashenoff for tortious interference; and (4) against the Temple for breach of the *first* contract (for sums unpaid by the Temple for service as its Rabbi and for reimbursement of his expenses for the Chicago conference). The trial court, after limited discovery on jurisdiction, dismissed Rabbi Goodman's suit, stating:

> "The Court concludes that there is no serious question that the causes of action against Temple Shir Ami are constitutionally-barred. In this case there were meetings, and at the meetings a decision was made concerning Rabbi Goodman's continued employment. That decision is ecclesiastical in nature, involving the selection of the Temple's spiritual leader, and for this reason the Court has no jurisdiction over the claims against Temple Shir Ami.

> The claims against Mr. Ashenoff present a closer question. However, the Court concludes that Mr. Ashenoff made his statements in the context of Temple meetings concerning Rabbi Goodman's continued employment. The Court concludes that it has no jurisdiction over the claims against Mr. Ashenoff.
> The Defendants' Renewed Motion to Dismiss is granted. The case is dismissed for lack of subject-matter jurisdiction."

We conclude that the trial court correctly dismissed the claims (with the exception of that for breach of the first contract, which we will shortly discuss). In order for the trial court to have resolved these disputes, it would have had to immerse itself in religious doctrines and concepts and "determine" whether the religious disagreements were a "valid" basis for the termination of Rabbi Goodman's services. The allegedly defamatory report and tortious interference occurred as part of this religious dispute and would require the trial court to weigh their effect on the board members as compared to the effects of the other considerations which clearly are religious disagreements. Inquiring into the adequacy of the religious reasoning behind the dismissal of a spiritual leader is not a proper task for a civil court. *See*, e.g., *Young v. Northern Ill. Conference of United Methodist Church*, 21 F.3d 184 (7th Cir.), *cert. denied*, 513 U.S. 929, 115 S.Ct. 320, 130 L.Ed.2d 281 (1994). Thus we affirm the trial court's dismissal of Rabbi Goodman's complaint with the following exception as to the first contract.

Rabbi Goodman served as the Temple's spiritual leader until the conclusion of the first contract, on June 30, 1994. Notwithstanding his service (according to the complaint), the Temple has failed to pay all the compensation due him and has failed to reimburse his expenses advanced by him for the Chicago conference. This claim does not create excessive entanglements with

religious beliefs, and thus does not preclude civil court intervention. *See Minker v. Baltimore Annual Conference of United Methodist Church*, 894 F.2d 1354 (D.C. Cir. 1990).

Accordingly, the trial court's dismissal order is reversed as to Rabbi Goodman's claim under the first contract. The order is otherwise affirmed. The cause is remanded for further proceedings consistent herewith.

In the Circuit Court of the Eleventh Judicial Circuit
in and for Dade County, Florida
General Jurisdiction Division

Case no. 94-16006 CA (10)

Rabbi Robert A. Goodman,

Plaintiff,

vs.

Temple Shir Ami and RichardAshenoff,

Defendants,

ORDER OF DISMISSAL
AND ORDER ON RENEWED MOTION TO DISMISS
FOR LACK OF SUBJECT-MATTER JURISDICTION

This cause came before the Court on October 30, 1996, January 23, 1997, and February 13, 1997, upon the Defendants' Renewed Motion to Dismiss for Lack of Subject-Matter Jurisdiction. The Court having reviewed the file, including the opinion of the district court of appeal, having conducted an evidentiary hearing, having heard argument of counsel, and being otherwise fully advised in the premises, it is ordered and adjudged as follows.

1. This is an action by Rabbi Robert A. Goodman against his former employer, Temple Shir Ami, and Richard Ashenoff, a former board member of the Temple. Rabbi Goodman brings claims against Temple Shir Ami for breach of contract, wrongful termination, and defamation. He brings claims against Richard Ashenoff for tortious interference with contract and defamation.

2. The Defendants moved to dismiss on the basis that the claims against them are barred by First Amendment to the United States Constitution and Article 1, Section 3, of the Florida Constitution. According to the Defendants, all of Rabbi Goodman's claims arise out of or involve the synagogue's selection of its religious leader. The Defendants argue that such a matter is at the core of constitutionally-protected freedoms, and that the courts may not entertain a lawsuit which involves judicial intrusion into a religious institution's choice of its spiritual leader.

3. The Court originally denied the Defendants' Motion to Dismiss, and the Defendants filed a Petition for Writ of Prohibition in the Third District Court of Appeal. The district court heard argument, and subsequently issued an opinion which stated:

> Because appropriate principles of appellate review suggest that the issues involved in this case are better decided upon a more complete development of the underlying facts and after an initial determination by the trial court, see Mendes v. Dowelanco Indus., LTDA., 651 So. 2d 776 (Fla. 3d DCA 1995), the petition for writ of prohibition herein is dismissed wholly without prejudice to consideration and determination below and subsequent review in this court.

4. This Court then allowed limited discovery. The Court subsequently heard the testimony of former Temple President Brian Mirson, Rabbi Goodman, and former Temple Board Member Robin Rashkind. In addition, the Court reviewed the materials which the parties submitted to the Court. The Court also heard legal argument on the constitutional issue.

5. The Court concludes that there is no serious question that the causes of action against Temple Shir Ami

are constitutionally-barred. In this case there were meetings, and at the meetings a decision was made concerning Rabbi Goodman's continued employment. That decision is ecclesiastical in nature, involving the selection of the Temple's spiritual leader, and for this reason the Court has no jurisdiction over the claims against Temple Shir Ami.

6. The claims against Mr. Ashenoff present a closer question. However, the Court concludes that Mr. Ashenoff made his statements in the context of Temple meetings concerning Rabbi Goodman's continued employment. The Court concludes that it has no jurisdiction over the claims against Mr. Ashenoff.

The Defendants' Renewed Motion to Dismiss is granted. The case is dismissed for lack of subject-matter jurisdiction.

It is adjudged that Plaintiff Rabbi Robert A. Goodman take nothing by this action and that Defendants Temple Shir Ami and Richard Ashenoff shall go hence without day. The Court reserves jurisdiction to award costs.

ORDERED in Chambers, Miami, Florida this 24th day of April, 1997.

s/Judge Margarita Esquiroz
Circuit Court Judge

Copies furnished to:
Raymond Robin, Esq.
Robert S. Glazier, Esq.
Peter A. Miller, Esq.
Clark D. Mervis, Esq.
Melvin S. Black, Esq.
John S. Freud, Esq.

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN
AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.: 94-16006 CA (10)

FL. BAR NO.: 201316

RABBI ROBERT A. GOODMAN,

Plaintiff,

v.

TEMPLE SHIR AMI, INC.,
A Florida non-profit corporation,

Defendant.

DEFENDANT'S MOTION TO DISMISS AND TO STRIKE

COMES NOW the Defendant, TEMPLE SHIR AMI, INC. (hereinafter, "TEMPLE"), by and through its undersigned counsel, and files this, its Motion to Dismiss Plaintiff's Complaint and to Strike, and as grounds therefor states as follows:

1. That this Court lacks subject matter jurisdiction over Count II of Plaintiff's Complaint, as to consider Count II this Court would need to make inquiry into religious law and doctrine, which inquiry would violate the First and Fourteenth Amendments of the United States Constitution and Article 1 Section 3 of the Florida Constitution. Count II (Breach of Second Contract) of Plaintiff's complaint asserts that a contract was repudiated without cause. The Defendant denies that the

contract referred to in Count II was ever formed, however, even if this Court should find that an enforceable Contract was formed, which Defendant denies, Defendant contends that this Court is without subject matter jurisdiction as any inquiry by the court would necessarily involve a determination of whether the repudiation was with or without cause, which would in turn require that this Court determine:

a. The essential qualifications and characteristics of a rabbi under Jewish Law;

b. Whether Rabbi Goodman possesses such qualifications and characteristics; and

c. Whether Rabbi Goodman has performed acts and/or omissions incompatible with the essential qualifications and characteristics of a rabbi under Jewish Law.

It is well established under both Federal and State law that civil courts must decline to assume jurisdiction in such matters where disputes cannot be resolved without inquiry into religious law and doctrine, so as not to violate the First and Fourteenth Amendments of the United States Constitution and Article 1 Section 3 of the Florida Constitution.

2. That this Court lacks subject matter jurisdiction over Count III of Plaintiff's Complaint. Count III asserts commission by Defendant of libel per se and slander per se based on statements which allegedly impute conduct and characteristics to Rabbi Goodman which were incompatible with his profession as a rabbi. In order to resolve this issue, this Court would have to determine the essential qualifications and characteristics of a rabbi under Jewish Law, whether Rabbi Goodman possesses said qualifications and characteristics, and whether the alleged statements of improper conduct and

characteristics are incompatible with the essential qualifications and characteristics of a rabbi under Jewish Law. Both Federal and State courts have hld that civil courts must decline to assume jurisdiction in such matters where disputes cannot be resolved without inquiry into religious law and doctrine, so as not to violate the First and Fourteenth amendments of the Untied States Constitution and Article 1 Section 3 of the Florida Constitution.

3. That even if Count II of Plaintiff's Complaint was not violative of the First and Fourteenth Amendments of the United States Constitution and Article 1 Section 3 of the Florida Constitution, it would still fail to state a cause of action as the claims asserted in Count II are barred by F.S. 725.01 (the Statute of Frauds).

4. That Plaintiff's request for damages for "mental pain, [and] suffering" in Count III of Plaintiff's Complaint should be stricken, as mental pain and suffering are not recoverable elements of damage in a cause of action for defamation and are not contained in the applicable Florida Standard Jury Instruction.

5. That Plaintiff's request for pre-judgment interest in Count II of Plaintiff's's Complaint should be stricken, as the claims of Plaintiff as to said Count are unliquidated.

WE HEREBY CERTIFY that a true and correct copy of the above and foregoing was served by mail to: Raymond L. Robin, Esq., OLLE, MACAULAY & ZORRILLA, PA., 1402 Miami Center, 201 South Biscayne Boulevard, Miami, Florida 33131 this 17th day of October, 1994.

MILLER, SELIG
& ASSOCIATES, P.A.
ATTORNEYS FOR DEFENDANT
U.S. JUSTICE BUILDING
SUITE 1111
155 S. MIAMI AVENUE
MIAMI, FLORIDA 33130
Tel.: (305) 358-6767

BY: s/PETER A. MILLER

Supreme Court, U.S.
FILED
NOV 29 1999
CLERK

No. 99-607

IN THE
SUPREME COURT OF THE UNITED STATES

RABBI ROBERT A. GOODMAN,
Petitioner,

v.

TEMPLE SHIR AMI and
RICHARD ASHENOFF,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

RESPONDENTS' BRIEF IN OPPOSITION

PETER A. MILLER
A. HINDA KLEIN
CONROY, SIMBERG &
GANON, P.A.
2600 DOUGLAS ROAD
SUITE 311
CORAL GABLES, FL 33134

ROBERT S. GLAZIER *
THE INGRAHAM BUILDING
SUITE 1020
25 S.E. SECOND AVENUE
MIAMI, FL 33131
(305) 372-5900

Counsel for Respondent
Temple Shir Ami

CLARK D. MERVIS
2937 S.W. 27TH AVENUE
SUITE 202
MIAMI, FL 33133
(305) 443-1600

Counsel for Respondent
Richard Ashenoff

Counsel of Record *

QUESTION PRESENTED
(restated)

Whether the Establishment or the Free Exercise Clause precludes civil courts from considering a rabbi's lawsuit against his former synagogue and a board member for breach of a claimed oral contract, termination in violation of the synagogue's internal by-laws, and defamation, where (according to the state court) the evidence established that consideration of the lawsuit would require review of the religious beliefs of synagogue members.

PARTIES TO THE PROCEEDING

The parties to the proceeding are as listed in the caption of the case: Rabbi Robert A. Goodman, Temple Shir Ami, and Richard Ashenoff.

Temple Shir Ami is a non-profit corporation. It has no parent company or publicly held company owning 10% or more of the corporation's stock.

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STATEMENT OF THE CASE AND FACTS

Rabbi Goodman's brief omits some of the most important facts in the case.

Temple Shir Ami's first contract with Robert Goodman had an original duration of two years, with an automatic one-year extension, unless either party gave notice of termination. (R. 13). "Serious concerns over the rabbi's performance" led the Temple's executive committee to recommend that the option year not be exercised. (R. 24, 508, 876; TA 50; TB 21). The Temple's board of directors, however, rejected the executive committee's recommendation, and instead exercised the option for the third year. (R. 24, 508, 887; TB 22, 26).

As the option year was drawing to a close, the Temple and the Rabbi entered into negotiations. (R.4). Members of the Temple's executive committee, though, began to have doubts about whether they wanted to retain Rabbi Goodman. The executive committee held a meeting, and the board members discussed Rabbi Goodman's rabbinical behavior. (R. 75, 585). Some of the concerns related to the Rabbi's violation of confidences of congregants. (R. 780-81). There were discussions of inappropriate remarks by the Rabbi to members of the congregation attending services or ceremonies. (R. 800-04). The executive committee members decided to strongly suggest to the full board of directors that negotiations with the Rabbi be discontinued and that the Rabbi be informed that he should pursue other employment. (R. 592; TA 55).

A few days later, the Temple's board met to consider the executive committee's recommendation against renewing

the Rabbi's contract. During the meeting, there were discussions of the Rabbi's performance. (R. 978). There were discussions about continuing breaches of confidence by the Rabbi. (TB 94). There were discussions of whether or not there should be *talis* (prayer shawl) available for the congregation. (TB 104). There was a discussion of the night when the *yahrtzeit* (memorial) candles were not lit, and the Rabbi himself went down and lit them. (R. 978; TB 95). Some board members "didn't like the way he ran a Chanukah service when we had our potato *latkes* [pancakes] afterwards." (R. 978; TB 106). The board members discussed the fact that the Rabbi wanted to "celebrate the holidays when the holidays are supposed to be celebrated. . . . Like if *Sukkot* came up on Wednesday the Temple wanted to celebrate it on a Friday. [The Rabbi] felt we should celebrate it on a Wednesday." (R. 978; TB 106). There was discussion of the fact that the Rabbi had wanted to order new prayer books for the high holidays, but the board had voted it down, because they were expensive. (R. 980).

The Rabbi was given an opportunity to speak during the meeting, and made a statement on his own behalf. (R. 613, 840-41).

The board of directors followed the recommendation of the executive committee and voted against proceeding with a renewal contract. (R. 17, 853). Nineteen board members voted against renewing the Rabbi's contract, five voted in favor of renewal, and one board member abstained. (R. 24, 853).

The Petition for Certiorari states that Temple Shir Ami has no tribunal, court or other judicial body for resolving its disputes. (Petition, at 2). However, under the by-laws of the Temple, the general membership of the Temple has "ultimate

authority over all aspects of the Temple," and can "override any decision of the Board or executive committee." (R. 99-100, 500). Rabbi Goodman never sought to bring the question of his employment to the general membership. (TB 55, 69; R. 917, 920).

Rabbi Goodman subsequently sued the Temple. In his Petition for Certiorari, he states that "In all of his claims against Temple Shir Ami, Rabbi Goodman seeks only damages." (Petition, at 7). However, Rabbi Goodman in his complaint asked alternatively for damages or for reinstatement to his position at the Temple. (R. 90).

The trial court dismissed Rabbi Goodman's case. The intermediate appellate court for the most part affirmed the trial court. *Goodman v. Temple Shir Ami*, 712 So. 2d 775 (Fla. 3d DCA 1998) (App.-1(b)-4). The appellate court found, under the facts of the case, that a court considering Rabbi Goodman's claims would have to consider religious matters: "In order for the trial court to have resolved these disputes, it would have had to immerse itself in religious doctrines and concepts and 'determine' whether the religious disagreements were a 'valid' basis for the termination of Rabbi Goodman's services." *Id.* at 777.

The appellate court further held that it would not be possible to determine the effect of the allegedly defamatory report and tortious interference without considering the sincerity of the stated religious beliefs of the board members. These alleged wrongs, the court noted, "occurred as part of this religious dispute and would require the trial court to weigh their effect on the board members as compared to the effects of the other considerations which clearly are religious disagreements. Inquiring into the adequacy of the religious

reasoning behind the dismissal of a spiritual leader is not a proper task for a civil court." *Id.*

The appellate court concluded, however, that the civil courts *could* consider Rabbi Goodman's claim for breach of his first contract, as it would not "create excessive entanglements with religious beliefs, and thus does not preclude civil court intervention." *Id.*

The Florida Supreme Court accepted jurisdiction over the case, but subsequently dismissed the appeal for lack of appellate jurisdiction. *Goodman v. Temple Shir Ami*, 737 So. 2d 1077 (Fla. 1999).

REASONS FOR DENYING THE WRIT

I. This case involves the narrow application of well-settled law

Rabbi Goodman's petition jousts with a phantom of his own creation. The Florida court did not interpret this Court's precedent "to require absolute abstention in any case which in any way involved a religious organization and its clergy." (Petition, at 10). To the contrary, the Florida court instead simply held that under the facts of this case, the civil courts could properly decide one of Rabbi Goodman's claims, but could not decide his other claims without intruding into constitutionally-protected religious matters. In other words, this case involves the application of well-settled law,

including the law established in many cases in which this Court has previously denied certiorari.[1]

The Florida court applied the numerous precedents that dictate caution in intruding into a religious institution's selection of its spiritual leader. The Florida court's balanced, moderate application of well-settled law provides no reason for this Court to grant a writ of certiorari.

II. There is no conflict among the circuit courts on issues raised in this case

There is no conflict among the decisions of the federal circuit courts on the issues raised in the case.

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[1] *See Clapper v. Chesapeake Conference of Seventh-Day Adventists,* 166 F.3d 1208 (4th Cir. Dec. 29, 1998) (table, text available on Westlaw, 1998 WL 904528), *cert. denied*, 119 S. Ct. 2021, 143 L.Ed.2d 1033 (1999); *Singleton v. Christ the Servant Evangelical Lutheran Church*, 541 N.W.2d 606 (Minn. Ct. App.), *cert. denied*, 519 U.S. 870 (1996); *Olson v. Luther Memorial Church*, no. C0-95-1623 (Minn. Ct. App. Feb. 20, 1996) (1996 Minn. App. Lexis 213), *cert. denied*, 519 U.S. 870 (1996); *Pierce v. Iowa-Missouri Conference of Seventh-Day Adventists*, 534 N.W.2d 425 (Iowa 1995), *cert. denied,* 517 U.S. 1220 (1996); *Young v. Northern Illinois Conference of United Methodist Church,* 21 F.3d 184 (7th Cir. 1994), *cert. denied,* 513 U.S. 929 (1994); *Higgins v. Maher,* 258 Cal. Rptr. 757 (Ct. App. 1989), *cert. denied*, 493 U.S. 1080 (1990); *McDonnell v. Episcopal Diocese of Georgia,* 381 S.E.2d 126 (Ga. Ct. App. 1989), *cert. denied*, 493 U.S. 935 (1989); *Rayburn v. General Conference of Seventh-Day Adventists,* 772 F.2d 1164 (4th Cir. 1985), *cert. denied,* 478 U.S. 1020 (1986).

First, this claim of conflict is irrelevant to this case, which comes from a state court. By definition, the present case from the state courts cannot create conflict with a decision of a federal circuit. If indeed there is a conflict among the federal circuit courts, then the claimed conflict would be most squarely presented by a case that came from the circuit courts.

But more fundamentally, the Florida court's decision in this case is entirely consistent with the cases which Rabbi Goodman relies upon. He relies upon three cases, but each of them endorsed a careful, case-by-case analysis in determining whether the courts can resolve a dispute involving religious institutions and their clergy.

Rabbi Goodman relies heavily on *Farias v. International Church of the Foursquare Gospel*, No. 95-4784 (11th Cir. April 24, 1996), in which the court merely held that "it was premature for the district court to conclude that the evidence will automatically implicate ecclesiastical concerns." The court added that if "the evidence adduced during discovery involves the interpretation of ICFG's religious beliefs, laws, or practices, then ICFG should be permitted to renew their dismissal motion in connection with a summary judgment motion."

Rabbi Goodman also relies upon *Minker v. Baltimore Annual Conference of United Methodist Church*, 894 F.2d 1354 (D.C. Cir. 1990), but there the court held that the First Amendment barred the plaintiff's claims for age discrimination and violation of internal rules. While the court allowed the plaintiff's breach of oral contract claim to proceed, it stated that "any inquiry that Minker was unsuited for a particular pastorship would constitute an excessive entanglement in its affairs." *Id.* The present case, of course,

involves whether Rabbi Goodman was unsuited for a particular religious position -- Rabbi of Temple Shir Ami. Under *Minker*, his lawsuit would be barred.

Finally, Rabbi Goodman relies on *Drevlow v. Lutheran Church*, 991 F.2d 468 (8th Cir. 1993), but there the issue was *not* a church's decision to terminate a minister; rather, it was a claim by a minister against the synod for placing false information in his personal file and removing his name from the list of eligible ministers.

There is no conflict among the circuit courts on any issue in this case.

III. Rabbi Goodman's attempts to distinguish this Court's decision in *Serbian* provide no reason for granting the writ

Rabbi Goodman argues that this case should not be controlled by *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976). But he is unable to exclude this case from the scope of *Serbian*.

Rabbi Goodman first attempts to distinguish *Serbian* on the basis that this case involves a written employment contract. This provides no basis for granting certiorari. Here, the Florida appellate court held that it could exercise jurisdiction over the claim based on breach of the written contract (the "first contract"), but not over the claim for breach of the claimed later oral contract. Rabbi Goodman's attempt to distinguish this case thus fails by its terms, since the Florida courts are exercising jurisdiction over the claim for breach of the written contract.

Rabbi Goodman also suggests that *Serbian* does not control this case because "Temple Shir Ami is a congregational religious organization which has not established a tribunal to decide its disputes." (Petition, at 11). This claim is wrong on the facts, and is legally irrelevant.

Temple Shir Ami has a body which can decide all issues. Temple Shir Ami is a congregational synagogue, and thus run by the congregation. Ultimate authority rests with the general membership. But Rabbi Goodman failed to bring his dispute to the congregation. His failure to bring the dispute to the general membership -- that is, his failure to exhaust available internal remedies -- is a reason for denying the writ, not granting it.

Furthermore, judicial abstention from deciding religious disputes applies to both congregational and hierarchical religious institutions. Courts may not decide religious disputes concerning a rabbi or Southern Baptist minister, just as they may not decide religious disputes concerning Catholic priests or Lutheran ministers. The congregational/hierarchical distinction is not relevant in clergy employment disputes. *See Burgess v. Rock Creek Baptist Church*, 734 F. Supp. 30, 31 n.2 (D. D.C. 1990); *Howard v. Covenant Apostolic Church*, 1997 Ohio App. Lexis 4180 (Ohio Ct. App. Sept. 19, 1997); *Chavis v. Rowe*, 459 A.2d 674 (N.J. 1983).

The congregational/hierarchical distinction applies in cases involving church property, control of the church, or schisms. When a church is divided, with both factions making claim to being the true church, and therefore owning the property of the church, there must be a determination of who has control of the church and the property. "The State has an obvious and legitimate interest in the peaceful

resolution of property disputes, and in providing a civil forum where the ownership of church property can be determined conclusively." *Jones v. Wolf*, 443 U.S. 595, 602 (1979). However, "the state's interest in providing a forum for ecclesiastical disputes is substantially diminished where the controversy does not concern formal title to property." *Crowder v. Southern Baptist Convention*, 828 F.2d 718, 725-26 (11th Cir. 1987).

In cases involving church property disputes or disputes between competing factions within a church, the congregational/hierarchical distinction is significant because it informs the courts of who the final decision-maker is, and thus whose decision must be accepted by the courts. "The distinction drawn . . . between the types of congregational and hierarchical church polities was relevant only to determining the ecclesiastical body to which the civil courts must defer in determining rights to use of property. " *Crowder v. Southern Baptist Convention*, 828 F.2d at 720 n.20. But this is not at issue in the present case.

The general rule against judicial review of religious matters, stated in *Serbian* and many other cases, fully applies to this case.

IV. There is no reason to grant the writ based on Rabbi Goodman's claim for violation of his constitutional rights

Rabbi Goodman claims that his constitutional rights are violated by the decision of the Florida court. He cites no authority to support his claim, and we are aware of none. Further, he has not suggested that this is a reason for granting the writ.

In addition, Rabbi Goodman did not rely on an equal protection claim in Florida's intermediate appellate court. This argument is thus not preserved.

CONCLUSION

Based on the above, Temple Shir Ami and Richard Ashenoff request that the Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

PETER A. MILLER
A. HINDA KLEIN
CONROY, SIMBERG &
GANON, P.A.
2600 Douglas Road, Suite 311
Coral Gables, FL 33134

—and—

ROBERT S. GLAZIER*
The Ingraham Building
Suite 1020
25 S.E. Second Avenue
Miami, FL 33131
(305) 372-5900

Counsel for Temple
Shir Ami

CLARK D. MERVIS
2937 S.W. 27th Avenue
Suite 202
Miami, FL 33133
(305) 443-1600

Counsel for Richard
Ashenoff

* *Counsel of record*

/s/_____
Robert S. Glazier

/s/_____
Clark D. Mervis

Supreme Court, U.S.
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No. 99-607

IN THE

Supreme Court of the United States

RABBI ROBERT A. GOODMAN

Petitioner

v.

TEMPLE SHIR AMI, INC.,
a Florida non-profit
corporation, and
RICHARD ASHENOFF,

Respondents

On Petition For Writ Of Certiorari
to the Supreme Court of the State of Florida

PETITIONER'S REPLY TO RESPONDENTS' BRIEF IN OPPOSITION

RAYMOND L. ROBIN, ESQ.
Counsel for Petitioner
RAYMOND L. ROBIN, P.A.
1121 SOUTH 21ST AVENUE
HOLLYWOOD, FLORIDA 33020
(954) 920-3003

QUESTIONS FOR REVIEW
(restated)

Whether the Establishment or the Free Exercise Clauses of the First Amendment to the United States Constitution preclude Florida Courts from considering the case of a Rabbi against a synagogue and a lay board member for claims for breach of contract, termination in violation of the synagogue's by-laws and defamation where the synagogue is congregational and has no tribunal for resolving its own disputes and the Rabbi has no other means of redress.

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STATEMENT OF THE CASE AND FACTS

The issue is whether Florida courts are required to abstain from providing a forum for redress for civil wrongs committed by a religious organization and its lay board member against its clergy even where there is no other forum available.

The Respondents attempt to minimize the importance of this case by implying that this is simply a case where a Rabbi's contract was not renewed. The Respondents make no mention of the fact that Temple Shir Ami's Board of Directors agreed to a new three-year contract and that the Agreement was duly recorded in its minutes. Nor do they acknowledge that this case is primarily about the Respondents' subsequent repudiation of that Agreement. In addition, although they have claimed for five years that there was no contract, the Respondents for the first time now claim that this is a case about an oral agreement.

This Court should accept the facts set forth in the Petitioner's Petition for Writ of Certiorari for at least two reasons. First, those facts were properly alleged in the Complaint and this appeal arises from the trial court's granting the Respondents' Renewed Motion to Dismiss for Lack of Subject Matter Jurisdiction. Second, although limited jurisdictional discovery was permitted by the lower courts, based upon the Respondents' First Amendment objections, the lower courts did not permit Rabbi Goodman to undertake any discovery on the merits of the case. The Respondents should not now be permitted to have this Court ignore the facts as alleged and accept the Respondents' version of the facts instead.

REASONS FOR ACCEPTING THE WRIT

Rabbi Goodman did not fail to exhaust his remedies.

The Respondents make the argument that the Writ should be denied because of Rabbi Goodman's "failure to exhaust available remedies" by not bringing the issue of Temple Shir Ami's repudiation of the Contract before the entire congregation of Temple Shir Ami. Respondents' Brief in Opposition at 8. Even accepting, for the sake of argument, that before an employee may sue on an employment contract he or she must first pursue all remedies available under the organizations' By-Laws, this argument is fallacious because the By-Laws here provide no remedy which Rabbi Goodman failed to exhaust. There is absolutely no procedure under the By-Laws whereby the Rabbi of Temple Shir Ami is granted the right to request that the congregation revisit a decision made by the Board.

The issues raised here reach beyond this case.

This is not the place to decide whether Rabbi Goodman has or has not been wronged. Here, it must be accepted that everything he has alleged is true.

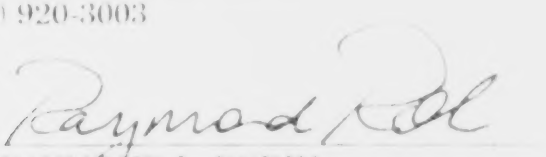
The lower courts have held that the Florida courts are closed to Rabbi Goodman regardless of whether the Respondents committed egregious wrongs against him or whether there is no forum for him to obtain redress. Were Rabbi Goodman the only victim of this unfair result, review would be justified here. But, as the numerous cases cited in earlier briefs demonstrate, there are many cases filed by clergy, who have been egregiously wronged, which are summarily dismissed without any regard for the merits. For that reason, review by this Court would not only be appropriate, but is necessary.

CONCLUSION

In light of the foregoing, Petitioner Rabbi Robert A. Goodman respectfully requests that the Court grant him a Writ of Certiorari and consider his appeal.

Respectfully submitted,

RAYMOND L. ROBIN, P.A.
1121 South 21st Avenue
Hollywood, Florida 33020
(954) 920-3003

By: 
RAYMOND L. ROBIN
Fla. Bar No. 613835